Commissioner of Income Tax, Shimla v. Shree Kangra Steel Pvt. Ltd.

Income Tax Appeal No.38 of 2005

Supplied court judgment; no neutral citation stated | 2009-09-08

Revenue appeal allowed for failure to give the AO an opportunity to examine and rebut additional evidence; evidence retained and matter remanded to CIT(A).

250(4) | 144 | 142(1) | 143(2) | Rule 46A

Division Bench | Deepak Gupta | V.K. Ahuja

01 FACTS OF THE CASE

The assessee returned a loss of Rs.19,16,720 for AY 1996-97. After non-appearance, a Section 144 assessment added Rs.7,17,747 for unsecured loans and Rs.12,50,000 for other charges. CIT(A) accepted books and material produced on appeal; the Tribunal rejected Revenue's objection that the AO had no opportunity to examine or rebut that evidence.

Source: PDF pp.1–3

02 DISCUSSION BY THE HON'BLE COURT

The Court read Section 250(4) with Rule 46A. It distinguished additional evidence tendered by the assessee from production directed by the appellate authority under sub-rule (4). Admission was justified on the explained non-appearance, but the opportunity under sub-rule (3) was mandatory and had not been given.

Source: PDF pp.3–5

03 JUDICIAL DECISION

Revenue's appeal was allowed. The Tribunal order and CIT findings were set aside, but the additional evidence already on record was expressly retained. CIT(A) was to give the AO a reasonable opportunity to counter it or produce rebuttal evidence. Question 1 was answered for Revenue; question 2 was not answered.

Source: PDF pp.5–6

04 OUTCOME / IN WHOSE FAVOUR

Revenue succeeded on the procedural safeguard. The substantive loan and expenditure issues remained for reconsideration; the judgment did not restore the additions as finally proved.

Source: PDF pp.5–6

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05 EXPERT COMMENTS

Admission and use of additional evidence are different steps — The Court accepted that the assessee had satisfactorily explained why the material was not produced before the AO. It nonetheless held that admitting the material did not permit reliance on it without the AO's reasonable opportunity to examine and rebut it. A record supporting admission therefore does not, by itself, demonstrate compliance with the separate hearing safeguard. (Source: PDF pp.4–5).

Why the suo motu argument did not answer this record — The Tribunal had relied on the appellate power to inquire and on Rule 46A(4). The High Court identified the source of the evidence as decisive here: the assessee produced it, rather than the Commissioner directing its production. The judgment should be applied to that identified situation; it does not require treating every appellate inquiry as identical to an assessee's additional-evidence application. (Source: PDF pp.3–5).

The remand preserved the material, not its accepted truth — The Court expressly directed that the evidence already on record should be read in evidence. Revenue obtained an opportunity to challenge it, not an order excluding it. For the renewed appeal, admission reasons, supply to the AO, the examination/rebuttal opportunity and a reasoned determination would address different parts of the procedural sequence. (Source: PDF pp.5–6).

No final finding on the disputed additions — The loan was said to fund electricity dues, and other charges were said not to track falling turnover proportionately. Those explanations were not finally adjudicated by the High Court. Question 2 was left unanswered. Neither the Rs.7,17,747 loan addition nor the Rs.12,50,000 estimate can be presented as conclusively sustained or deleted by this judgment. The seventh source page contains only its page number and is preserved with the original. (Source: PDF pp.2–3 and 5–7).

Source: PDF pp.1–7

SOURCE & VERIFICATION

Original court judgment / order

Full original read; every original page visually inspected.

STATUTORY SCOPE

Provisions and historical figures are recorded only as addressed in this judgment. No current statutory position or subsequent-treatment clearance is represented.

LATER TREATMENT

Appeal, review, recall and stay status has not been independently confirmed.

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